1952

File No. O. Gr. Bom. Laws
52

Legal Deptt.
A BRANCH

Subject:— Opinions under the Greater Bombay Laws and the Bombay High Court (Declaration of Limits) Act, 1945

File No. O. Greater Bom. Laws/52

Gen. 194

759-A

C O N T E N T S

Legal Department File No C. Greater Bombay Land 222/52

1952

Sr. No.	R.I./C.No.	Subject	Pages
1.	~~1704/A~~ 15-10-52	Re filing of a Suit (No. 1850 of 1949) in Bombay City Civil Court Bombay by Shankuwarbai for setting aside .Ex. exparte decree in Suit No 144 of 1948	1.2

Mjr/14/6
5 Cs.

It appears that in or about 1944 one Shamkuwarbai filled a suit No. 144 of 1944 in the court of the Second Class Sub-Judge at Andheri against the applicant in respect of a piece of land at Vile Parle alleging that it was encroached upon by the applicant. An ex-parte decree was passed in the said suit in 1944. The applicant came to know of the decree when Shamkuwarbai took out execution of the said decree. She therefore filed suit No. 1850 of 1949 in the Bombay City Civil Court for settingaside the ex-parte decree in suit No. 144 of 1944. The decree holder also filed a suit No 645 of 1950 against the applicant to revocer arrears of rent for the years after the ex-parte decree was passed. The City Civil Court dismissed the applicant's suit and decreed the rent suit filled against her. Thereupon the applicant filed two appeals in the High court from both the decrees in the said suits. It appears that at the time of admission of these appeals it was found that the Bombay City Civil Court was not competent to try the said suits Nos. 1859 of 1949 and 645 of 1950, as they were not proceedings pending in the Sub-Judge's Court at Andheri when the Bombay Act XVII of 1946 was passed. The applicant, therefore, has requested Govt. to issue a direction under section 7 of Bombay Act VIII of 1950 which Provides:

> "If in consequence of this Act, any such Court, Tribunal, Authority or Officer has been superseded or has ceased to exist, such proceeding or any appeal or revisional application or any other application in such proceeding shall lie to or be disposed of by such authority as the State Government

P.T.O.

R.L.A- is requested to advise whether Govt . can issue a direction and if so, which court should be asked to try the suits.

// Section 7 of Bombay Act VIII of 1950, which has been relied upon by the applicant, has no application . Besides, the suits filed in the City Civil Court were independent suits and were neither pending proceedings nor applications for execution or enforcement of a decree or order of any court. Consequently, no direction can be issued by Govt. as prayed for

Sd/- K.T.Katarki
13/10

R.L.A.

Sd/- P.N.Lad
13/10

U.O.R. to H.D. No 17084/ A dated 15-10-52

Kjr/14/6
4 Cs.